

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

OYSTER OPTICS, LLC.,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

Case No. 2:20-cv-00211-JRG

JURY TRIAL DEMANDED

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Plaintiff Oyster Optics, LLC (“Oyster”) and Defendant Cisco Systems, Inc. hereby jointly provide this Joint Claim Construction and Prehearing Statement pursuant to P.R. 4-2.

I. LIST OF PROPOSED CLAIM TERMS TO WHICH THE PARTIES AGREED ON A CONSTRUCTION (P.R. 4-3(a)).

U.S. Patent No. 8,913,898¹	
Claim Term/Phrase (asserted claims)	Agreed Proposed Construction
phase modulate and grammatical variants / phase modulator (claims 3, 17) / phase modulated optical signal (claims 4, 18) / phase-modulated signal (claim 10)	“alter the phase of light to create an optical signal having a phase that is representative of data. Use of phase modulation excludes the use of amplitude modulation.”
“receiver” (claims 1, 14)	“receiver without a demodulator”
“the second optical signal”	“a second optical signal” is antecedent for “the second optical signal”

U.S. Patent No. 10,205,516	
Claim Term/Phrase (asserted claims)	Agreed Proposed Construction
“phase modulate” and variants; phase modulated optical data signal (claim 6)	“alter the phase of light to create an optical signal having a phase that is representative of data. Use of phase modulation excludes the use of amplitude modulation.”

II. PROPOSED CLAIM CONSTRUCTIONS BY EACH PARTY FOR THE DISPUTED CLAIM TERMS (P.R. 4-3(b)).

Pursuant to P.R. 4-3(b), the Parties’ proposed constructions of disputed terms are provided in the chart below. The Parties’ proposed constructions are also set forth in the accompanying Exhibit 1, along with the intrinsic and extrinsic evidence on which the parties intend to rely.

¹ Cisco objects to continued litigation of the ’898 and ’516 Patents due to Res Judicata and Kessler Doctrines. See D.I. 37 (Motion to Dismiss Plaintiff’s First Amended Complaint as to Infringement of U.S. 8,913,898 and U.S. 10,205,516).

U.S. Patent No. 6,665,500		
Claim Term/Phrase (asserted claims)	Oyster's Proposed Construction	Cisco's Proposed Construction
"phase modulate" and variants including: "phase modulating" (claims 1, 17)	"alter the phase of light to create an optical signal having a phase that is representative of data"	"altering the phase of light to create an optical signal having a phase that is representative of data, where the phase modulating does not include amplitude modulating"
"phase-modulated optical signals" (claim 1) / "phase modulated optical data" (claim 16)	"phase modulate" should be construed as set forth above. Otherwise, no construction necessary.	"optical signals created by phase modulation, not amplitude modulation"
"amplitude-modulating" (claims 1, 17)	"amplitude modulate" and variants means "altering the amplitude of light to create an optical signal that is representative of data." Otherwise no construction necessary.	"altering the amplitude of light to create an optical signal having an amplitude that is representative of data, where the amplitude modulating does not include phase modulating"
"amplitude-modulated signals" (claim 16) / "amplitude-modulated optical data" (claim 17)	"amplitude modulate" should be construed as set forth above. Otherwise, no construction necessary.	"optical signals created by amplitude modulation, not phase modulation"
"mode" (claims 1, 16, 17)	No construction necessary.	"period during which at least one specific optical data signal is either amplitude modulated or phase modulated, but not both"

U.S. Patent No. 8,913,898²		
Claim Term/Phrase (asserted claims)	Oyster's Proposed Construction	Cisco's Proposed Construction
"output data"	"data outputted by the receiver"	"the data encoded in the second optical signal and outputted by the receiver"
"input data"	"data inputted to the transmitter"	"the data inputted to the transmitter and encoded in the first optical signal"
"a transmitter having a laser, a modulator, and a controller" (claims 1, 14)	No construction necessary.	"transmitter containing a laser, a modulator, and a controller"

U.S. Patent No. 10,205,516³		
Claim Term/Phrase (asserted claims)	Oyster's Proposed Construction	Cisco's Proposed Construction
"receiver"	No construction necessary.	"receiver without a demodulator"
"voltage" (claim 1)	Plain and ordinary meaning, or, in the alternative, "different in electrical potential expressed in volts."	"electric pressure that causes current to flow in a circuit"

III. ANTICIPATED LENGTH OF TIME NEEDED FOR THE CLAIM CONSTRUCTION HEARING (P.R. 4-3(c)).

Pursuant to P.R. 4-3(c), the parties estimate about four hours will be needed for the claim construction hearing (or as long as the Court needs or desires). Cisco, however, submits that if the Court were to grant Cisco's Motion to Dismiss Plaintiff's First Amended Complaint as to

² Cisco objects to continued litigation of the '898 and '516 Patents due to Res Judicata and Kessler Doctrines. See D.I. 37 (Motion to Dismiss Plaintiff's First Amended Complaint as to Infringement of U.S. 8,913,898 and U.S. 10,205,516).

³ Cisco objects to continued litigation of the '898 and '516 Patents due to Res Judicata and Kessler Doctrines. See D.I. 37 (Motion to Dismiss Plaintiff's First Amended Complaint as to Infringement of U.S. 8,913,898 and U.S. 10,205,516).

Infringement of U.S. 8,913,898 and U.S. 10,205,516, the Markman Hearing would be done in two hours or less.

**IV. PROPOSED WITNESSES TO BE USED AT THE CLAIM
CONSTRUCTION HEARING (P.R. 4-3(d)).**

None.

Dated: January 29, 2021

Respectfully submitted,

**COUNSEL FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served on January 29, 2021, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Eric H. Findlay
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